

Between the Right Honourable the Lady Katherine Pelham, Widow, Relict  
and One of the surviving Executors of the Right Honourable Henry Pel-  
ham, Esquire, her late Husband, deceased, and James West, Esquire, the  
other surviving Executor of the said Henry Pelham, and Administrator of  
the personal Estate and Effects unadministered of Thomas Pelham, de-  
ceased, who was eldest Son of the said Henry Pelham,

Appellants.

A N D

Sufanna Gregory, Spinster, sole Executrix of George Gregory, Gentleman,  
deceased, the Right Honourable William Lord Viscount Vane, of the King-  
dom of Ireland, Administrator of the personal Estate of Christopher Vane,  
his late Brother, deceased, the Right Honourable Henry Earl of Darling-  
ton, and the most Noble Thomas Holles Duke of Newcastle,

Respondents.

## The CASE of the Respondent, the Lord Viscount Vane.

**J**OHN late Duke of Newcastle, deceased, was seised in Fee-simple of several Honours, Castles, Manors, Lands, Rents, and He-  
reditaments, and was also seised, to him and his Heirs, of several Copyhold Messuages, Lands, and Tenements, and of several  
other Premises held by virtue of Leases for Lives, and was also intitled to several other Premises held by virtue of Leases  
for Years, some of which were absolute, and others determinable on the Death of One or more particular Person or Persons;  
and he was, amongst other Things, likewise intitled to divers Messuages and Lands at *Shimpling*, called *Shimpling Park*, in the County  
of *Suffolk*, being now of the improved yearly Value of 130 *l.* or thereabouts, which he held under a Lease from the Crown, granted to  
*William Hussy* and *James Biggs*, bearing Date the 3d of *June*, in the 33d Year of King *Charles* the Second, for a Term of 99 Years,  
whereof 12 Years were unexpired at *Michaëmas* 1758, subject, with other Estates in the County of *Nottingham*, to the yearly Rent of  
6 *l.* 13 *s.* 4 *d.* payable to his Majesty, his Heirs, and Successors.

The late Duke *John*, by his Will duly executed and attested, after devising to his Wife *Margaret* Duchess of *Newcastle*, and to  
his Daughter the Lady *Henrietta* *Holles*, certain particular Estates therein described, gave and devised all other his Honours, Castles,  
Manors, Lordships, Manor-houses, Chaces, Lands, Tenements, Rectories, Advowsons, Rents, and Hereditaments, as well Leasehold  
and Copyhold as Freehold, and all his Estate and Interest therein in Law and Equity, in manner following; viz.

To the Respondent, his Grace the present Duke of *Newcastle*, for Life—And, after his Decease,  
To his First and all and every other his Son and Sons lawfully to be begotten, and the Heirs Male of the Body and Bodies of all and  
every such Son and Sons lawfully issuing, severally and successively—And, for want of such Issue,

To the said *Henry Pelham*, for his Life—And, after his Decease,  
To his First and all and every other his Son and Sons lawfully to be begotten, and the Heirs Male of the Body and Bodies of all and  
every such Son and Sons lawfully issuing, in Order and Course one after another, as they should severally be in Priority of Birth and  
Seniority of Age, the elder of such Sons, and the Heirs Male of his Body issuing, always to be preferred and to take before the younger  
of such Sons, and the Heirs Male of his Body issuing—And, for want of such Issue,

To the Honourable *William Vane*, the Second Son of the Right Honourable *Christopher* then Lord *Barnard*, for and during the Term  
of his natural Life—And, after his Decease,

To the First and every other the Son and Sons of the said *William Vane* lawfully to be begotten, severally and successively, in Tail  
Male, in like manner—And, for want of such Issue,

To the Honourable *Gilbert Vane*, then Son and Heir apparent of the said *Christopher* then Lord *Barnard*, for his Life—And, after  
his Decease,

To the First and all and every other the Son and Sons of him the said *Gilbert Vane* lawfully to be begotten, severally and succes-  
sively, in Tail Male, in like manner—And, for Default of such Issue,

To remain over to the right Heirs of the Testator *John* Duke of *Newcastle* for ever.

There was a Proviso in the Will, whereby the Testator declared, that in case any Person, who should be intitled to take any Part of  
the Premises by virtue of any of the Limitations of the Will, should at any time do or suffer, or cause to be done, any Act whatsoever,  
whereby to prevent or hinder the Leasehold and Copyhold Estates, or any of them, from going to such Person and Persons, and in such  
Manner, as, by virtue of his Will, his Freehold Estate was thereby limited and intended to go, then and from thenceforth the Person  
or Persons doing or suffering, or causing to be done, any such Act or Deed, should not have or take any Benefit or Advantage by the Will,  
or any of the Limitations therein.

And he gave the Residue of his personal Estate, after Payment of his Debts and Legacies, to his Duchess *Margaret*, and appointed  
her, the Respondent his Grace the now Duke of *Newcastle*, and the Honourable *Henry Pagett* Esquire, Executors of his Will.

The Testator, *John* late Duke of *Newcastle*, died about 15th *July* 1711, without revoking or altering his Will, leaving the said  
*Margaret* his Duchess, and Lady *Henrietta*, his only Child and Heir at Law, surviving him.

Soon after the Duke's Death, several Suits at Law and in Equity, and in the spiritual Court, arose, wherein the Validity of the Will  
was contested with respect to the late Duke's real and personal Estates; pending which Suits, Lady *Henrietta* intermarried with the  
Right Honourable the Lord *Harley*, afterwards Earl of *Oxford* and *Mortimer*.

In some short time after the Marriage, a Treaty of Accommodation having been proposed, an Agreement in Writing, dated 30th  
*July* 1714, was concluded on between the Lord *Harley* and his Lady, the Respondent the present Duke of *Newcastle*, the late *Henry*  
*Pelham* his Brother, or his Friends (he then being an Infant), whereby it was declared and agreed between the Parties, and his Grace  
the present Duke of *Newcastle* covenanted on the behalf of himself and his Brother *Henry Pelham*, that Lady *Henrietta* should have  
certain particular Estates, therein described, to herself, in Fee-simple.

The Lord *Harley* agreed and covenanted for himself and his Lady, that all the other Estates, as well Leasehold and Copyhold as  
Freehold, which the late Duke *John* was seised or possessed of, or intitled to, in Law or Equity, at the time of his Death, should  
be held and enjoyed by the Respondent his Grace the present Duke, for his Life, with such Remainders over, and subject to such Li-  
mitations and Restrictions, Trusts, Powers, and Provisoes, and in such Manner, as in the Will are limited or declared.

And that all the Burgage Houses and Lands in *Alborough*, in the County of *York*, which belonged to the late Duke, or to which  
Lord *Harley* and his Lady were intitled, and also certain Manors, Lands, and Hereditaments, in the Counties of *Dorset* and  
*Wilts*, held of the Bishop of *Salisbury* by Leases for Lives, should be held and enjoyed by the Respondent his Grace the present Duke,  
with such Remainders over, and in the same Manner, as the other Estates, therein before-agreed to be held by him, were to be held  
and enjoyed by virtue of the Agreement.

And that Lord *Harley* and his Lady should suffer the Will to be proved in the Ecclesiastical Court; but no Use to be made of such  
Probate, to the Prejudice of the Agreement.

And it was further agreed, that an Act of Parliament should be obtained, if possible, for establishing and confirming the Agree-  
ment.

The Will was accordingly duly proved in the Prerogative Court of *Canterbury*.  
And an Act of Parliament was accordingly obtained, of the 4th and 5th Year of King *George* the First, intituled, "An Act to ren-  
der more effectual the Agreements that have been made between *Thomas Holles* Duke of *Newcastle*, *Henry Pelham*, Esquire, Ed-  
ward Lord *Harley*, and the Lady *Henrietta* his Wife, *William Vane* and *Gilbert Vane*, Esquires, Sons of *Christopher* Lord *Barnard*,  
or any of them, in relation to the Will and Estate of *John* late Duke of *Newcastle*, and for settling the same in such manner as may  
be agreeable to the Intent of the said Agreement, and for other Purposes therein mentioned"—whereby it was enacted, that the  
Will and Agreement should be established and confirmed, except in some few Particulars, which were altered and changed.

And it was also enacted, that the Estates, which were finally agreed to be enjoyed by Lady *Henrietta*, should be enjoyed in such  
manner as therein mentioned; and that certain Freehold Estates, which were finally agreed to be enjoyed by his Grace the present  
Duke, and the other Persons claiming in Remainder after him, should be, and the same were thereby, vested and settled upon, and,  
from the Decease of the late Duke *John*, in and upon, and

To

Duke of Newcastle  
Fee of Honours,  
&c.  
led to several  
ds for Years;  
, of Shimpling  
Suffolk, for 99  
Leaf from the  
e, 33 Car. II.

August 1707.  
late Duke John.

Utes.

Proviso.

Residuum.  
Executors.  
July 1711.  
ohn died.  
nests arose.

of Accommoda-  
Agreement,  
July 1714.

Will proved.  
4 & 5 Geo. I.  
ct of Parliament.

1760  
7  
K  
Shimpling  
19

27

Lady Katherine Pelham, and James West, Esquire, Appellants.



Uses of Freeholds.	To the Use of the Respondent the present Duke, for his Life—And, after his Decease, To the Use of the First and all and every other Son and Sons of the Respondent the present Duke, severally and successively, one after another, and the Heirs Male of their several and respective Bodies—And, for want of such Issue, To the Use of the said <i>Henry Pelham</i> , for Life—And, after his Decease, To the Use of the First and other Sons of the said <i>Henry Pelham</i> , severally and successively, one after another, according to their Seniority of Age, and Priority of Birth, and the Heirs Male of their several and respective Bodies, the elder of such Sons, and the Heirs Male of his Body, being always preferred and to take before the younger of them, and the Heirs Male of his or their Body or Bodies—And, for want of such Issue, To the Use of the said <i>William Vane</i> , for Life—And, after his Decease, To his First and other Sons successively in Tail Male, in like manner as aforesaid—And, for Default of such Issue, To the Use of the said <i>Gilbert Vane</i> , for Life—And, after his Decease, To the Use of his First and other Sons successively in Tail Male, in like manner—And, for want of such Issue, To the right Heirs of the said late Duke <i>John</i> .
Leaseholds for Lives.	And it was also enacted, That all Leasehold Estates for Lives, which <i>John</i> the late Duke was seised of, or intitled to, on the 29th August, 1707, should be, and they were thereby, vested and settled, in like manner, To the Use of the Respondent the present Duke for Life, with all and every the like Remainders over, as before stated.
Leaseholds for Years.	And it was further enacted, That all and every other Manors, Rectories, Advowsons, Tythes, Lands, Tenements, and Hereditaments whatsoever, whereof or wherein <i>John</i> the late Duke, or any other Person or Persons in Trust for him, at or immediately before his Decease, had any Term or Terms for Years, or Chattel, Interest legal or equitable (other than such as were thereby before vested in the said Lady <i>Henrietta</i> , or her Trustees, and except <i>Pontefract Park</i> , and the Leasehold Estates at <i>Orton</i> , in the County of <i>Huntingdon</i> , therein mentioned), should be, and the same were thereby, vested in the Respondent the present Duke of <i>Newcastle</i> , for so long of the several Terms as his Grace should happen to live—And, after his Decease, that the same should be held and enjoyed by such Person or Persons who would be intitled to the same, in case the said Act had not been made.
Clause of Renewal.	And it was further enacted, That the Respondent the present Duke of <i>Newcastle</i> , during his Life, and every other Person and Persons who, for the Time being, should be seised or possessed of any of the said Leasehold Manors, Lands, Tenements, Rectories, Tythes, and Hereditaments, by virtue of the Limitations therein contained, when and as often as he or they should respectively think it convenient, should have full Power to surrender any such Lease or Leases for Life, Lives, or Years, and make the same absolutely void, to the Intent only that it or they might be renewed, or a new Lease or Leases might be made of the Premises comprised in such surrendered Lease or Leases, respectively, at the Time of such Surrender or Surrenders; and that every such new Lease and renewed Lease, from time to time, as often as they, or any of them, should be renewed, should, during the Continuance thereof, be held and enjoyed by such Person or Persons who would have been intitled to such surrendered Lease or Leases, in case the same had continued in being. And it was further enacted, That nothing in the said Act contained should be construed to confirm the respective Limitations in the Will contained, of the several Terms for Years whereof the said late Duke <i>John</i> died possessed.
The present Duke entered and enjoyed.	By virtue of this Agreement and Act of Parliament, the Respondent the present Duke of <i>Newcastle</i> entered upon all the Estates both Freehold and Leasehold, which were thereby, or by any of them, limited to him for his Life, with Remainders over; and he has ever since continued, and is now in the Possession and in the Receipt of the Rents thereof, except that some of the Freehold Manors and Premises were sold several Years ago by his present Grace, and other Persons then in being, who were intitled thereto in Remainder after his Death, and several of the Leases for Years which were in being, and by virtue of which some of such Leasehold Estates were held at the Time of the Death of the late Duke <i>John</i> , have been from time to time renewed.
Has no Issue Male.	His Grace the present Duke of <i>Newcastle</i> has been married many Years; but never had any Issue Male.
Wm. Vane, named in Will, created Ld. Vic. Vane; had Issue Christ. and Wm. the now Resp.	<i>William Vane</i> , to whom all the Estates were limited for Life, with Remainder in Tail Male, in Default of Issue Male of the Respondent the present Duke, and of his Brother the late <i>Henry Pelham</i> , was created Lord Viscount <i>Vane</i> of the Kingdom of <i>Ireland</i> , and he had Issue Two Sons, <i>Christopher</i> his eldest Son, who died an Infant, without Issue, in the Life-time of his Father, and the Respondent <i>William</i> his Second Son, the present Lord Viscount <i>Vane</i> .
And died.	Afterwards <i>William</i> Lord <i>Vane</i> , the Respondent's Father, died, leaving no other Issue surviving him than the Respondent.
Administration of Goods of Christopher granted to the now Respondent.	The Respondent the present Lord <i>Vane</i> has taken out Letters of Administration to his Brother <i>Christopher</i> , and is thereby become intitled to all such Interest in the Leasehold Premises for Years, which vested in his Brother <i>Christopher</i> , who was the first Person in <i>Esse</i> , in Point of Time, who took any Estate of Inheritance in the Freehold Premises mentioned in the Will and Act of Parliament.
Thomas Pelham died.	After the Birth both of the said <i>Christopher Vane</i> and of the Respondent the present Lord <i>Vane</i> , the late <i>Henry Pelham</i> had Issue Two Sons, <i>Thomas</i> his eldest Son, and <i>Henry</i> his younger Son, who both died about the 27th or 28th November 1739, Infants, in the Life-time of their Father.
6 Mar. 1754.	<i>Henry Pelham</i> died 6th March 1754, and by his Will appointed the Appellants, together with <i>Richard Arundell</i> and <i>Hutton Perkins</i> , Esquires, his Executors, who both joined with the Appellants in the Probate of the Will, and are since dead.
Death of Henry Pelham, and his Executors.	<i>Henry Pelham</i> never took Letters of Administration to his Son <i>Thomas</i> ; but, after his Death, they were granted to <i>Richard Arundell</i> ; and, upon his Death, Letters of Administration of the said <i>Thomas Pelham</i> , unadministered by <i>Richard Arundell</i> , have been granted to the Appellant <i>James West</i> .
Administration to his Son Thomas.	The Appellants filed their Bill on 20th December 1758, in the Court of Chancery, against the Respondents, thereby setting forth the several Facts before stated; and further charging, That they, as surviving Executors of the said <i>Henry Pelham</i> , or that the Appellant <i>James West</i> , as Administrator of the personal Estate unadministered of the said <i>Thomas Pelham</i> , was or were become intitled to the absolute Estate and Interest of and in the Leasehold Estates for Years, subject only to the Life Estate of the Respondent the present Duke of <i>Newcastle</i> , and to the Contingency of his having a Son born alive; and, being so intitled, that they, by an Agreement in Writing, dated the 25th of September 1758, and made between the Appellants of the one Part, and the said <i>George Gregory</i> of the other Part, agreed with him for the Sale of the Estate called <i>Shimpling Park</i> , subject to the Estate for Life of the Respondent the present Duke, and to the Contingency of his having a Son born alive, for the Sum of 1000 <i>l.</i> ; and that they had thereby covenanted, that the Respondent the present Duke should, within Six Months, procure a new Lease from the Crown to be granted to his Grace, or to such Person or Persons as he should nominate, in Trust for the Uses and Limitations in the Will of <i>John</i> the late Duke, of the said Park and Lands, and of all Messuages, Lands, and Hereditaments, comprised in the Term of 99 Years, for such reversionary Term as would fill up the Term now in being to 31 Years, from the Date of such new Lease, at the annual Rent of 1 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> payable to his Majesty, his Heirs, and Successors, in such manner as in such new Lease should be reserved; the said annual Rent of 1 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> being a proportionable Share in respect of the said Estate at <i>Shimpling</i> , of the annual Rent of 6 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> payable for the same, and for other Estates in <i>Nottinghamshire</i> ; and that, within Three Months after such new Lease should be obtained, the Appellants would convey over to the said <i>George Gregory</i> all their contingent reversionary Interest in the said Park and Lands, not only for all the Residue and Remainder, if any, which should be then to come and unexpired of the said Term of 99 Years, but also of such Term as should be granted by the new Lease; and, by the said Agreement the said <i>George Gregory</i> covenanted to pay the 1000 <i>l.</i> for the absolute Purchase of the Appellants Interest in the Premises, and would accept of a proper Assignment.
20 Dec. 1758.	The Bill further stated, That the Appellants, being desirous of carrying this Agreement into Execution, applied to the said <i>George Gregory</i> to perform his Part of it: That they likewise made the Respondent the present Duke acquainted with it, and desired that his Grace would procure a Renewal of the Lease, to enable them to perform the Agreement; and that they were in hopes such Applications would have been complied with; but that the Respondent the present Lord <i>Vane</i> , as the Issue Male of his Father, and Representative of his Brother, and the Respondent the present Earl of <i>Darlington</i> , as the personal Representative and eldest Son and Heir Male of <i>Henry</i> late Earl of <i>Darlington</i> , who was the eldest Son and Heir Male of <i>Gilbert Vane</i> , mentioned in the Will of <i>John</i> the late Duke, obstructed the Execution of the Agreement, by disputing the Appellants Title to the Estates agreed to be sold, upon the several Pretences mentioned in the Bill.
Bill states.	The Bill further stated, That the Respondent the present Duke declared, he was willing to renew the Lease; but that, as he was only intitled to the Premises for his Life, he ought not to pay the Fine, or be at the Expence of the Renewal; but that the Fine and Expences of Renewal ought to be a Charge upon the Estate; and that he ought only to keep down the Interest thereof during his Life.
Agreement for Purchase of Shimpling Park, dated 25th Sept. 1758.	The Bill further stated, That the said <i>George Gregory</i> refused to pay his Purchase-money, and objected, that the Appellants could not make him a good Title to the Premises; but that he might be subject to Suits to be brought against him by the Respondents the Lord <i>Darlington</i> and Lord <i>Vane</i> , upon the Death of the Respondent the present Duke without Issue Male.
Charges in Bill.	The Bill therefore prayed, That the Agreement made with the said <i>George Gregory</i> might be specifically performed, and carried into Execution: That the Lease of the Premises might be renewed according to the Terms of the Agreement; and that the Respondent the now Duke of <i>Newcastle</i> might pay the Fine and Fees due and payable thereon; and that the said <i>George Gregory</i> , upon such new Lease being obtained, and upon the Appellants assigning to him all their Right and Interest in the said Leasehold Premises at <i>Shimpling</i> , might pay the 1000 <i>l.</i> Purchase-money for the same to the Appellants.
Prayer of Bill.	The Respondent Lord <i>Vane</i> , on the 23d February 1759, put in his Answer; thereby admitting, that the said <i>John</i> late Duke of <i>Newcastle</i> was seised and possessed of the several Freehold and Leasehold Estates, as mentioned in the Bill, and particularly of the Leasehold called <i>Shimpling Park</i> ; and that he made such Will as in the Bill is mentioned; and that such Agreement and Act of Parliament were had, as in the Bill also mentioned; and that the Respondent the now Duke of <i>Newcastle</i> hath never had any Issue Male; but that the said <i>Henry Pelham</i> had Issue the Two Sons, who died at the Time, and of such Ages, as mentioned in the Bill—And says, That
23 Feb. 1759.	<i>Willia</i>
Ld. Vane's Answer.	



*William Vane*, his Father, who is mentioned in the Will of *John* the late Duke of *Newcastle*, had Issue *Christopher Vane*, his eldest Son, who died an Infant without Issue in the Life-time of his Father, and the Respondent, his younger Son; and insisted, that his Brother *Christopher* was the First Person, in Point of Time, in *Esse*, who took any Estate of Inheritance in the Premises mentioned in the Will and Act of Parliament; and that he dying an Infant, and without Issue, the Respondent, as the only surviving Son and Heir-apparent of his Father *William*, became the First Person in *Esse*, who took any Estate of Inheritance in any of the Premises, by virtue of the Limitations stated in the Bill—That his Father died many Years ago, leaving the Respondent his only Son and Heir; and thereupon he the Respondent became seised of an Estate Tail in Remainder, immediately expectant on the Determination of the Estates limited to the Respondent the present Duke of *Newcastle*, and his late Brother *Henry Pelham*, and to their First and other Sons respectively, of and in all the Freehold and Copyhold Estates and Premises in the Will and Act of Parliament mentioned; and that he also became intitled to all the Leasehold Manors and Premises, as well such of them as were held by Leases for Lives, as such as were held by Leases for Terms of Years, in the Will and Act mentioned, subject to the Contingency of the Respondent the present Duke's and *Henry Pelham*'s dying without Issue Male of their respective Bodies—And therefore denied, that the absolute Estate and Interest in the Manors and Lands held by Leases for Years, and limited to the Respondent the present Duke for his Life, did vest in *Thomas Pelham*, the eldest Son of *Henry Pelham*, subject to the Estate for Life of the Respondent the present Duke, and to the Contingency of his Grace having a Son born; and subject also to the Estate for Life of *Henry Pelham* therein, in case the Respondent the present Duke had happened to die in the Life-time of the said *Henry Pelham*, without having a Son born—And he also denied, that the absolute Estate and Interest in the Leasehold Estates for Years (subject as aforesaid) were Part of the personal Estate of *Thomas Pelham* the Infant, or that the same did, upon his Death, belong (subject as aforesaid) to his Father *Henry Pelham*; and therefore believes that the Appellants are not intitled thereto.

Denies the Estate vested in *Thomas Pelham*, subject to Contingency of the present Duke's having a Son.

Therefore Appellants not intitled.

Respondent Administrator of his Brother *Christopher*; and intitled to the Right expectant, &c.

The Respondent further stated by his Answer, That he was the Administrator to his Brother *Christopher*, and admitted that he had disputed, and did dispute, the Right of the Appellants to the Estates of the late Duke *John* held by Leases for Years; but insisted, that he was intitled to the absolute Right and Interest therein expectant on the Death of the Respondent the present Duke without Issue Male; and that no Estate or Interest in those Leasehold Estates vested in the said *Thomas Pelham*, so as to intitle him thereto, or to defeat the contingent Interest limited to the Respondent; and that the Limitation of such contingent Right or Interest in this Respondent being to arise on the Deaths of the Respondent the present Duke and *Henry Pelham* without Issue Male; and that they being both in *Esse* at the Time of making the Will of the said late Duke, the same is a good and valid Limitation to arise within such a reasonable Compass of Time as hath been allowed of at Law and in Equity in Limitations of Leasehold Estates; and insisted, that such his Right and Interest was well-grounded; and that the Right and Interest claimed by the Appellants in their Bill was without Foundation in Law or Equity; and therefore that they could not make a good Title to a Purchaser of the Premises in the Bill mentioned.

The other Defendants likewise put in their Answers; which were replied to.

Afterwards *George Gregory* died, having made the Respondent *Susannah Gregory*, Spinster, his Executrix.

The Cause was properly revived against *Susannah Gregory*; and, being at Issue, came on to be heard before the Right Honourable the Lord Keeper of the Great Seal on the 13th, 14th, 16th, and 17th Days of *November*, and 4th *December*, 1759, when, after a full Hearing, his Lordship, by his Decree, dated the said 4th Day of *December*, "did declare, he was of Opinion, as in this Case the Claims of the now Respondents the Lord *Vane* and the Earl of *Darlington* were not within his Cognizance to determine, he could not decree a specific Performance of the Agreement in question against the Respondent *Susannah Gregory*; and did therefore order, that the Appellants Bill, as against the now Respondents, Lord Viscount *Vane* and the Earl of *Darlington*, should stand dismissed, with Costs; and, as against the Respondents *Susannah Gregory* and the Duke of *Newcastle*, without Costs."

Decree.

From which Decree the Appellants have appealed to your Lordships, in order that the same may be wholly reversed.

But this Respondent humbly submits it to your Lordships, that the said Decree is just, and agreeable to the Rules of Law and Equity; and that the same shall be affirmed, for the following, amongst other,

## R E A S O N S :

- I. The Right of the Respondent is a mere legal Right, and properly determinable in a Court of Law, if the Event should happen that his Grace the present Duke of *Newcastle* shall die without Issue Male; and if he leaves Issue Male, which may likewise yet happen, then the Right of the present Parties can never come in question; therefore a Court of Equity ought not to compel the Respondent to litigate a Right by Anticipation, which either may never come in question, or which, if it ever should, would be properly determinable in a Court of Law, upon an Ejectment, and not in a Court of Equity.
- II. Because this was a Bill, to draw from the Court an Opinion, in order to give a Sanction to an unmarketable Title; and a Court of Equity ought not to decree a specific Performance of an Agreement for a Purchase, where it is doubtful whether a good Title can be made to the Purchaser.
- III. But suppose that it had been proper now to have determined upon the Rights of the Parties, then it is apprehended that it ought to have determined, that no such Estate or Interest vested in *Thomas Pelham*, as was transmissible to his Representatives.
- IV. The Rights of the Issue Male of the present Duke, if he shall have any, of *Thomas Pelham*, of the Respondents Lord *Vane* and the Earl of *Darlington*, are conceived not to be Possibilities, but Contingencies with several Aspects: That each of them had a contingent Right of taking and enjoying these Leasehold Estates, on the happening of certain Events; but the vesting or attaching of the Right ought, as is conceived, to be suspended till the Events happen, when it will be certainly known who is the Person intitled under the Limitations in the said Will; but those Events can never happen during the Life of his Grace the Duke of *Newcastle*.
- V. If an absolute Interest in the Leaseholds can vest at all in any Person during the Life of the Duke of *Newcastle*, then it is submitted, that this Interest vested absolutely in *Christopher Vane*, he being the First Person in *Esse* to whom the same were limited in Tail.

Wherefore, and for divers other Reasons, to be offered at the Hearing, the Respondent humbly hopes, that the Decree shall be Affirmed, and the Appeal Dismissed, with Costs.

C. PRATT.  
GEO. PERROTT.



*The Right Hon. the Lady Katherine* } Appellants.  
*Pelham, Widow, and another, -*

*Susanna Gregory, Spinster, the Right*  
*Hon. the Lord Viscount Vane, and* } Respondents.  
*others, - - - -*

*The CASE of the Respondent,*  
*the Lord Vane.*

---

*To be Heard at the Bar of the House of Lords, on*  
*Monday the 17 Day of March 1760.*